

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**
Norfolk Division

SEAN ANTONIO BRINKLEY, #320544,

Petitioner,

v.

ACTION NO. 2:04CV420

GENE M. JOHNSON, Director of the
Virginia Department of Corrections,

Respondent.

FINAL ORDER

This matter was initiated by petition for a writ of habeas corpus under 28 U.S.C. § 2254.

The petition alleges violation of federal rights pertaining to petitioner's convictions. Brinkley was convicted of one count of wire fraud and three counts of mail fraud on August 9, 2001, in the United States District Court for the Eastern District of Virginia, as a result of which he was sentenced to serve 37 months imprisonment on each count, with each sentence to run concurrently. Further, in 2000 and 2001, Brinkley was also convicted in Richmond Circuit Court, Virginia Beach Circuit Court, and Norfolk Circuit Court of uttering bad checks, forgery, fraud, failure to appear, and perjury, as a result of which he was sentenced to a total of 2 years, 9 months, and 30 days to run consecutively with his federal sentences.

The matter was referred to a United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia for report and recommendation. Report of the Magistrate Judge was filed on April 5, 2005, recommending dismissal of the petition. By copy of the report, each party

was advised of his right to file written objections to the findings and recommendations made by the Magistrate Judge. On April 21, 2005, the Court received Petitioner's Objections and Response to Magistrate Judge's April 5, 2005 Report (Document No. 22).

The Court, having reviewed the record and examined the objections filed by the petitioner to the United States Magistrate Judge's Report, and having made de novo findings with respect to the portions objected to, does hereby adopt and approve the findings and recommendations set forth in the Report of the United States Magistrate Judge filed April 5, 2005. It is, therefore, ORDERED that the petition be DENIED and DISMISSED, because petitioner's claims were previously adjudicated by the Supreme Court of Virginia on the merits and none of the statutory exceptions apply that would allow this Court to review the claims on the merits.

It is further ORDERED that judgment be entered in favor of the respondent.

Petitioner Brinkley has failed to demonstrate "a substantial showing of the denial of a constitutional right," therefore, the Court declines to issue any certificate of appealability pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure. See Miller-El v. Cockrell, 123 S.Ct. 1029, 1039 (2003).

Petitioner is hereby notified that he may appeal from the judgment entered pursuant to this Final Order by filing a written notice of appeal with the Clerk of this court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within 30 days from the date of entry of such judgment.

The Clerk shall mail a copy of this Final Order to the petitioner and to counsel of record for the respondent.

UNITED STATES DISTRICT JUDGE

Norfolk, Virginia

May , 2005